(1993) 03 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Spl. Appeal No. 351 of 1991

Pradeep Kumar APPELLANT

Vs

Secretary, Ganganagar Sugar Mills Ltd. and Others RESPONDENT

Date of Decision : 04-03-1993

Acts Referred:
Industrial Disputes Act, 1947 — Section 2, 25FF, 25FFF

Citation : (1994) 1 LLJ 1139 : (1993) 1 RLW 358

Hon'ble Judges : V.K. Singhal, J;Inder Sen Israni, J

Bench : Division Bench

Advocate : Virendra Bandhu, for the Appellant; R.D. Purohit, for the Respondent

Final Decision : Dismissed

Judgement

Israni, J.—This Special Appeal has been filed against the order dated April 18, 1991, by which the writ petition filed by the petitioner was dismissed.

2. Briefly stated, the appellant, who is resident of Kota, was appointed in the Ganganagar Sugar Mills Ltd. Kota, as a Salesman in the Country Liquor Shop, situated at Kota. He was appointed w.e.f. April 9, 1975 on Rs. 5.50 per day, on daily wage basis, vide Office Order dated May 4, 1975. Subsequently, he was given Rs. 200/- per month. He also worked as Clerk from March 7, 1976 to April 3, 1976. His services were terminated w.e.f. April 3, 1976, by order dated March 24, 1976 (Anx.3). In Anx.3, by which services of the appellant, alongwith fifteen others, were terminated, it was stated that as they were temporary/ad hoc, their services were terminated w.e.f April 3, 1976. A dispute was raised by the appellant, which was referred to the Labour Court. The Labour Court found that employment of the appellant was temporary and ad hoc, therefore, he did not acquire any right, since he was appointed on ad hoc/temporary basis. The Labour Court upheld the order of termination.

3. It is contended by Mr. Virendra Bandhu, learned counsel for the appellant, that the case of the appellant is governed by Section 25F of the Industrial Disputes

Act and he was entitled to the conditions precedent to retrenchment, as provided in the said Section, which have not been fulfilled. The appellant has completed more than 240 days and was entitled to be given one month''s notice and also wages in lieu of the same. Apart from this, he was also entitled to compensation equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months. It is also contended that every termination is retrenchment and even when the business is closed as claimed by the respondents, Section 25F will be applicable.

4. It is submitted by Mr. R.D. Purohit, learned counsel for the respondents, that Ganganagar Sugar Mills Ltd. does the work of manufacturing country liquor. The sale of country liquor for different areas in Rajasthan is given by auction by the Government of Rajasthan. However, for one year, i.e., from April 1, 1975 to March 31, 1976, the licence for sale of country liquor was given by the Government of Rajasthan to respondent No. 3 for Kota. Therefore, salesmen were appointed on ad hoc/temporary basis for sale of country liquor in Kota. After the period of one year was over, the shops were closed, which is admitted by the appellant also. The appellant was working as salesman in one of the liquor shops. It is further submitted that the appellant himself filed his statement of claim (Anx.5) for grant of relief u/s 25FFF of the ID Act, which deals with compensation on closure and not with compensation on retrenchment. It is also submitted that vide Anx. 3, services of sixteen persons, all of whom were appointed on adhoc/temporary basis, were terminated and the appellant is one of them. It is pointed out that no person, whose services were appointed vide Anx.3, has been reappointed by respondent No. 3. It is further pointed out that, in the writ petition, the petitioner has put up a new claim by claiming relief u/s 25F of the ID Act, which was never claimed before the Labour Court, nor was mentioned in the statement of claim filed by the appellant. The Labour Court has also given a finding, based on the evidence and the admission of the appellant himself, that the country liquor shop, where the appellant was employed as salemsan, was closed.

5. We have heard both the parties and gone through the documents placed on record. A bare perusal of Anx.5, statement of claim, filed by the appellant, before the Labour Court, shows that in para 2(B) of the same, a claim of compensation u/s 25FFF of the ID Act was raised. Nowhere in Anx.5, any dispute regarding applicability of Section 25F, has been raised. It, therefore, shows that the relief to be granted under the provisions of Section 25F of the ID Act has been raised only in the writ petition before this Court. Section 25FFF provides for compensation to be given to workman in case of closing down of undertakings, where if an undertaking is closed for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of Sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25F of the Act. Admittedly, the business of selling country made liquor at the shop, where the appellant was working, was closed, on expiry of the term of

one year of the licence. Section 25F deals with conditions precedent to retrenchment of workman and it provides that no workman employed in any industry, who has been in continuous service for not less than one year, shall be retrenched, except in the way provided therein. In the matter under consideration, the business of selling country liquor itself was closed, on account of which services of all the sixteen persons, including the appellant, employed on adhoc/temporary basis for selling country liquor, were terminated vide Anx.3. Therefore, it cannot be said the services of the appellant were terminated on account of retrenchment and as such, the action is not covered by the definition of word ''retrenchment'' as defined u/s 2(oo) of the ID Act. The termination, in the instant case, was not for any of the two conditions mentioned in Clauses (a) and (b) of Section 25F of the ID Act. The word ''retrenchment'' as defined, means to discharge surplusage in a running or a continuing business. When a business or undertaking or unit is no more functioning, the discharge of workman will not amount to retrenchment. It was nowhere stated during the course of arguments that the closure of the business was fake or manipulated and has been used as a garb for retrenchment of service of the appellant. Respondent No. 3 took a licence for sale of country liquor for a period of one year and, on expiry of that period, the licence stood terminated and, with that termination, respondent No. 3, also ceased to have any right of employment.

6. In Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union, it was held by the Apex Court that ''retrenchment'' connotes in its ordinary expectation that the business itself is being continued, but that a portion of the staff or the labour force is discharged as surplusage. The termination of services of all the workmen as a result of closure of business cannot, therefore, be properly described as retrenchment In Hart Prasad v. A.D. Divelkar AIR 1957 SC 121, while considering Section 2(oo) and Section 25F of the ID Act, it was pointed out by the Apex Court that "retrenchment means discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bonafide closure of business...." The matter under consideration is also similar in nature, as the whole business of selling country liquor was closed by respondent No. 3. on expiry of licence period and services of all adhoc/temporary employees, who were working as salesmen, were terminated by single order (Anx.3), as mentioned above. Thus, it cannot be said by any stretch of imagination that termination of services of the appellant is, in fact, a retrenchment and, therefore, covered under the provisions of Section 25FF of the ID Act. This Court, in Rajasthan Small Scale Industries Employee''s Union v. State of Rajasthan and Ors. 1990 Lab. I.C. 1668, has held that "the termination of service of workmen consequent on partial closure of an undertaking does not amount to retrenchment. The law does not cast a duty on the employer to make the payment of compensation u/s 25FFF of the Act before closure." In the case mentioned above, Furniture Making Centre of the Rajasthan Small Scale

Industries Corporation Ltd. was closed, after it existed for several years, on account of which , services of several employees were terminated. It was held by this Court that it was not a case of retrenchment and was that of a closure, which was genuine, bonafide and real. Thus, it is evident from the law discussed above that the Legislature has not placed closure of an undertaking or part thereof on the same footing as retrenchment u/s 25F of the I.D. Act.

7. We are, therefore, of considered opinion that the matter of appellant cannot be governed u/s 25F of the ID Act, as his services have not been retrenched. He was employed on temporary/adhoc basis while licence was given to respondent No. 3 for sale of country liquor for a period of one year. After the sale of liquor was closed, on expiry of licence, the services of the appellant, alongwith other similarly situated employees, were terminated and respondent No. 3 had a right to do so.

8. The learned counsel for the appellant has re f erred to Avon Services Production Agencies (P) Ltd. v. Industrial Tribunal, Haryana and Ors. 1979 I LLJ l. This was a matter of three workmen, who worked in a container painting section of the company, which was closed way back in 1964 and yet these three workmen, who used to paint the containers, were retained for several years thereafter. It was held by the Apex Court that painting section could not be recognised as a sub-section eligible for being styled as a part of undertaking and, as such, mini classification cannot be permitted. This authority is of no help to the appellant, since the whole business of selling the country liquor was carried on only for one year and services of all the employees, including the appellant, who were appointed on temporary/ad hoc basis, were terminated by one order, i.e, Anx.3. Mahesh Choudhary v. State of Rajasthan and Ors. 1987 (II) RLR 690 was a case, in which petitioner was appointed on the post of Peon on daily wage basis in July, 1983. His services were terminated on February 2, 1987. It was held that the matter was governed by Section 25F of the ID Act and he was entitled to be given notice etc., as provided therein. This authority has, evidently, no relevancy with the facts under consideration.

9. Gammon India Limited Vs. Niranjan Dass, was a matter, in which, services of appellant were terminated on account of recession and reduction in volume of work of the company. It was held by the Apex Court that it amounts to retrenchment. Evidently, the, facts of this case are totally different than the one under consideration, therefore, the appellant can derive no benefit from the same. S.G. Chemicals and Dyes Trading Employees'' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, was a case, in which, marketing division of a company was closed down without complying with Section 25O of the ID Act. This company was operating in Bombay through its three divisions. In 1984, the Company was sold out. As the buyers proposed to handle the future sales of the Company through their own distribution channels, the services of the staff working at the Churchgate office were no longer required. Therefore, by a notice, as prescribed by Rule 82-A of the Industrial Disputes (Bombay) Rules, 1957 the

Company intimated to the Government of Maharashtra that in accordance with Section 25FFA, it intended to close down the undertaking/establishment/office situated at Churchgate. The Apex Court granted Leave to Appeal and allowed the union''s appeal with costs, holding the company guilty of unfair labour practice of failure to implement the settlement and gave proper relief to the aggrieved workmen with suitable directions. Evidently, this authority has also no applicability to the matter under consideration.

10. We do not find any force in this Special Appeal, which is, therefore, dismissed, with no order as to costs.